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Mervyn's LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Great White Bear, LLC,

Plaintiff,

-against-

Mervyns, LLC,

Defendant.

06 Civ. 13358 (RMB)(FM)

DECLARATION OF
LISA T. SIMPSON

LISA T. SIMPSON declares:

1. I am a member of the Bar of this Court and of the firm Orrick, Herrington & Sutcliffe LLP, attorneys for defendant Mervyn's LLC ("Mervyn's") in this action. I submit this declaration in support of Mervyn's' motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) and in opposition to the cross-motion to amend the complaint filed by Plaintiff Great White Bear LLC ("GWB").

2. Attached hereto as Exhibit A is a true and correct copy of what purports to be a transcription of a voicemail left by Scott Jeffries of Mervyn's for Sandy Fodiman of GWB, marked P 01090, and produced by GWB on February 7, 2007.

3. Attached hereto as Exhibit B for easy cross-reference is a copy of the March 31, 2005 e-mail, produced by GWB and marked P 01091, which is referenced in GWB's proposed Second Amended Complaint and is submitted as Exhibit A to the Declaration of Danny Fodiman in Opposition to Motion for Judgment on the Pleadings and in Support of Cross-Motion to Amend, dated February 27, 2007.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at New York, New York on March 16, 2007.



Lisa T. Simpson

EXHIBIT A

BEGIN VM MESSAGE # 3

S. Jeffries: Hey Sanford it's Scott, I got some rough numbers for you. Um, I'm lookin' at about nine million dollars in sales on the collections, over eighteen months that's on two fixtures. And I've got ya' at like, four million two on active. 'Cause I actually have, some fabrics to give you, what my proposal was, what is for ten six for you to take over the Side Out active fixture. I couldn't move the back to school, 'cause we were already in production. So that'll get you to a total sales figure of thirteen million two fifty, ah, and that would equate to roughly twenty million seven in retail purchases. And that's at a thirty-eight margin right, so I'm guessing we probably wanna' be at sixty-seven, sixty-eight mark up so you can back that out to get to cost purchases. Um, this is a little high from the perspective of four way productivity, 'cause that did not back out the table um, but that gets you basically to my ra- ah, average rack productivity for the department, so I- I don't know if you wanna' take it down ten percent, but I- I feel like this- it's pretty aggressive as it sits today. Give me a call if you have any questions ah, I'm in between appointments. I had to come down to the lobby, hopefully you're getting a good signal and you can hear everything. I will talk to you later, bye.

END VM MESSAGE # 3

EXHIBIT B

YAHOO! MAIL

Welcome, **dfodiman**
[Sign Out, My Account]

[Mail Home](#) - [Mail Tutorials](#) - [Help](#)

I want to
become a...
Click here to
find out how.

Accountant
Bounty Hunter
Counselor
and more...

Mail ▾ **Addresses** ▾ **Calendar** ▾ **Notepad** ▾

[Mail For Mobile](#) - [Mail Upgrades](#) - [Options](#)

Check Mail

Compose

Search Mail

Search the Web

OFFER A card in 3 days
for bad credit*

[Previous](#) | [Next](#) | [Back to Search Results](#)

Delete

Reply

Forward

Star

Move

Folders [Add - Edit]

Inbox (1)

Draft

Sent

Bulk [Empty]

Trash [Empty]

My Folders [Hide]

Bubble Gum

Charming

Kohls

Neimans

Nordstrom

Todd

doggin it

jf

marsha

sanjay

sara smith

todd fodiman

Search Shortcuts

My Photos

My Attachments

See your credit
score - free

Don't quit job
1 year degree

Mortgage rates
low as 4.625%*

This message is not flagged. [[Flag Message](#) - [Mark as Unread](#)]

[Printable View](#)

Subject: RE:

Date: Thu, 31 Mar 2005 14:09:39 -0800

From: "Scott Jeffries" <Scott.Jeffries@mervyns.com> [View Contact Details](#) [Add Mobile Alert](#)

To: "Danny Fodiman" <dfodiman@yahoo.com>

I'll make it up in the last 12 months. Nothing else I can do in this season unless my sales plan is raised to accommodate.

-----Original Message-----

From: Danny Fodiman [mailto:dfodiman@yahoo.com]

Sent: Thursday, March 31, 2005 1:36 PM

To: Scott.Jeffries

Subject:

Hi Scott Sandy asked me to forward this message to you. He was concerned after the conversation he had with you the other day. Based upon your original phone message which told Sandy that the collections would be \$9,000,000 at cost and active would be \$4,200,000 at cost (13,200,000) over an 18 month period he wanted to know if we would be able to hit the numbers you had given him. That would translate based on your message to \$20,700,000 in retail sales at a 38% maintained guaranteed margin with the initial IMU at 67%. The reason for this concern is the guarantees which we have already given Rampage. I realize that you had said the number could be aggressive and maybe 10% high but our guarantees are substantial. Please bear this in mind. Best Regards, Sandy

Delete

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P 01091